FILED
JAN 28 2008
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA Plaintiff, v. Jose Francisco MENA-Nunez (1) Miguel VALENCIA-Arreguin (2) Maria BIRUETA-Palominos (3) Material Witnesses.	Magistrate No. '08 MJ 8078 COMPLAINT FOR VIOLATION OF: Title 18 U.S.C. § 3144 F.R.Crim.P. [Material Witness]

The undersigned complainant being duly sworn states:

That on or about January 24, 2008, within the Southern District of California, material witnesses, Jose Francisco MENA-Nunez, Miguel VALENCIA-Arreguin and Maria BIRUETA-Palominos did witness and observe defendant "C.A.R.T." transport into the United States three undocumented aliens, in violation of Title 8, United States Code, Section 1324(a)(1)(A)(ii). The Material Witnesses have testimony to a petition in the State of California Juvenile Court against the defendant and whose whereabouts at the time of trial will be a foreign country, or unknown, and they should be detained until their testimony can be secured. The affiant further alleges that the above referenced material witnesses are citizens and natives of Mexico with no legal right to remain in the United States, and have no apparent means of support or family ties. Therefore, the above referenced material witnesses are a material witness under Title 18, United States Code, Section 3144.

This complainant states that this complaint is based on the attached Probable Cause Statement incorporated herein by reference.

DATED: January 25, 2008

MICHAEL MIKUSKI
U. S. BORDER PATROL AGENT

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE, THIS 28TH DAY OF JANUARY, 2008.

PETER C. LEWIS
UNITED STATES MAGISTRATE JUDGE

I, Senior Border Patrol Agent Michael Mikuski_declare under penalty of Perjury, the following is true and correct:

PROBABLE CAUSE STATEMENT

1. I am a Senior Patrol Agent with the United States Border Patrol, assigned to the El Centro Sector Prosecutions Unit. This probable cause statement is made in support of a material witness complaint, pursuant to Title 18, United States Code, Section 3144, for Jose Francisco MENA-Nunez, Miguel VALENCIA-Arreguin and Maria BIRUETA-Palominos. This statement seeks the Witnesses' detention so that their testimony may be secured for trial in the Southern District of California.

2. The United States Government has filed a juvenile petition against "C.A.R.T.", within the State of California's Juvenile Court system for the violations of Title 8, United States Code, Section 1324, Transportation of Illegal Aliens within the Southern District of California. The Government has also filed a petition against "C.A.R.T." for violating California State Penal Code 148 (a)(2), Resist, Obstruct, Delay of Public Officer

3. On January 24TH of 2008, Border Patrol Agents of the El Centro Sector encountered "C.A.R.T." as he attempted to smuggle nine illegal aliens for financial gain. "C.A.R.T." was subsequently apprehended by agents for his role in the smuggling scheme.

4. Agents observed a group of individuals make an illegal entry into the United States. Agents observed this group of illegal entrants board a gold 1993 Oldsmobile Royale 88 sedan, bearing California registration plate of 5ZPS602. The driver, "C.A.R.T.", then drove north way from the border area. When Agents attempted to stop the sedan to further investigate a possible violation of 8 U.S.C. 1324, "C.A.R.T." failed to yield to agents. Two controlled tire deflation devices were successfully deployed, however "C.A.R.T." still refused to stop the sedan.

5. "C.A.R.T." ultimately stopped the vehicle. "C.A.R.T." was behind the steering wheel of the sedan and continued to resist agents at the scene but ultimately was taken into custody.

6. Agents questioned the other occupants of the sedan and determined them all to be citizens of countries other than the United States illegally in the United States.

7. Material Witnesses to the incident are able to provide positive identification of the Driver of the sedan, "C.A.R.T." and as having a significant part in the smuggling scheme. The Material Witnesses are also able to provide significant testimony which would cooberate the statements of the Agents.

8. Material Witness Miguel VALENCIA-Arreguin stated the driver, "C.A.R.T.", was driving fast and was swerving back and forth on the road to avoid several things he believed were meant to flatten the tires on the sedan. VALENCIA stated he saw the stop sign and told "C.A.R.T." to stop but he did not.

9. Material Witness Jose Francisco MENA-Nunez stated as the group was getting in the sedan and it began driving away as one woman was being dragged. MENA stated the driver, "C.A.R.T.", was driving dangerously and was telling them they were going to get away.

10. Material Witness Maria BIRUETA-Palominos stated the driver of the sedan, "C.A.R.T." knew he was being chased and stated if he was to get stopped it would be bad for him. BIRUETA stated "C.A.R.T." said he was going to try and get away.

11. Based on the foregoing, I respectfully submit testimony from the Material Witnesses at trial will be material.

12. In addition, it will not impractical to secure the presence of Jose Francisco MENA-Nunez, Miguel VALENCIA-Arreguin and Maria BIRUETA-Palominos by subpoena for the following reasons:

a. Jose Francisco MENA-Nunez, Miguel VALENCIA-Arreguin and Maria BIRUETA-Palominos are not a citizens of the United States and currently reside in Mexico.

b. Jose Francisco MENA-Nunez, Miguel VALENCIA-Arreguin and Maria BIRUETA-Palominos do not possess any immigration documentation to be, reside or live in the United States lawfully.

c. Jose Francisco MENA-Nunez, Miguel VALENCIA-Arreguin and Maria BIRUETA-Palominos have an incentive to avoid coming to the United States and appearing in court as government witnesses as they were trying to illegally enter the United States without properly filing for admittance.

I believe based on the facts set out above, there is no condition or combination of conditions that would reasonably assure the appearance of Jose Francisco MENA-Nunez, Miguel VALENCIA-Arreguin and Maria BIRUETA-Palominos. Accordingly, I respectfully request that a complaint be issued for Jose Francisco MENA-Nunez, Miguel VALENCIA-Arreguin and Maria BIRUETA-Palominos.

WHEREFORE your affiant prays that the Court issue a Material Witness Complaint for Jose Francisco MENA-Nunez, Miguel VALENCIA-Arreguin and Maria BIRUETA-Palominos and they be imprisoned or bailed as the case may be.

Executed on January 25, 2008 at 6:00 P.M.

Senior Border Patrol Agent

On the basis of the facts presented in the probable cause statement consisting of 2 pages, I find Probable cause to believe that the Material Witnesses named in this probable cause statement hold significant evidence in a indictment against the defendant, "C.A.R.T.", and should be detained in accordance with Title 18,United States Code section 3144.

Peter C. Lewis
United States Magistrate Judge

1-25-08 @ 7:20 PM
Date/Time